

98 FERC & 61, 085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

CALifornians for Renewable Energy, Inc.

v.

Docket No. EL01-65-000

British Columbia Hydro and Power
Authority, Powerex Corporation, Southern
Energy Marketing Company (Mirant),
and Bonneville Power Administration

ORDER DISMISSING COMPLAINT

(Issued January 31, 2002)

On April 16, 2001, CALifornians for Renewable Energy, Inc. (CARE) filed a complaint alleging that the respondents charged unjust and unreasonable rates for sales of electricity into the California market, and requesting several remedies. As discussed below, we find that aspects of the relief sought by CARE are beyond the scope of the Commission's authority and that the allegations in CARE's complaint do not support its request for summary relief. Moreover, we note that issues concerning the justness and reasonableness of wholesale electricity rates in the California market have been addressed, or are being addressed, in other proceedings.

This order provides clarification regarding the Commission's remedial authority concerning the electricity spot market in California.

I. Background

On April 16, 2001, CARE filed the complaint.¹ It requests that the Commission rectify alleged unjust and unreasonable prices in the wholesale markets for energy and ancillary services operated by the California Independent System Operator (California ISO). CARE alleges that British Columbia Hydro and Power Authority (BC Hydro), Powerex Corp. (Powerex), Southern Energy Marketing Company (renamed Mirant) and Bonneville Power Administration (Bonneville) withheld power during a period of peak demand in order to create a shortage and exercised market power to charge unjust and unreasonable rates.² CARE argues that these alleged actions violated the Federal Power Act (FPA), federal and state antitrust laws, the civil rights of Californians under Title VI of the Civil Rights Act of 1964, and the North American Free Trade Act (NAFTA). CARE requests that: (1) the Commission, pursuant to section 202(c) of the FPA, request that the Secretary of Energy declare an energy emergency; (2) the United States government investigate the nature and extent of alleged market manipulation by BC Hydro and Powerex, and as appropriate, "assess refunds and damages to U.S. corporations, U.S. governmental authorities (including the State of California) and U.S. citizens[, including punitive damages, to the extent permitted by law;]" (3) the Commission investigate possible market manipulation by the Los Angeles Department of Water and Power (LADWP), Mirant and Bonneville; (4) the Commission order refunds for any overcharges by LADWP, Powerex, Mirant and Bonneville; and (5) the Commission "seek to restore financial confidence in the California market by assuming full control of this market on the wholesale and retail side."

¹CARE states that it is "a non-profit public benefit corporation." The complaint does not describe CARE's membership, but in another proceeding, CARE described itself as a citizen group.

²CARE refers to alleged actions over "a six month period in 2000." However, it is not entirely clear which six month period it refers to, because it makes allegations concerning the last six months of 2000, yet it also makes allegations concerning May of 2000.

II. Notice of Filing and Responsive Pleadings

Notice of CARE's complaint was published in the Federal Register,³ with motions to intervene and protests due on or before May 8, 2001. The Public Utilities Commission of the State of California (California Commission) filed a notice of intervention raising no substantive issues. Timely motions to intervene raising no substantive issues were filed by: Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC; the Cities of Redding, Santa Clara, and Palo Alto, California and the M-S-R Public Power Agency; the California Electricity Oversight Board; and Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC. Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant) filed a timely motion to intervene and comments. Mirant Americas Energy Marketing, L.P. (Mirant Americas), LADWP, BC Hydro and Powerex, and Bonneville (collectively, Respondents) filed answers.⁴

Respondents move for dismissal of the complaint, because: the allegations in the complaint are vague and unsupported; the Commission lacks jurisdiction to determine violations of federal and state antitrust laws, the civil rights of Californians under Title VI of the Civil Rights Act of 1964, or NAFTA; and FPA section 206 does not give the Commission jurisdiction over Bonneville, BC Hydro or LADWP. Mirant Americas also notes that CARE acknowledges that its allegations concerning Mirant Americas were already before the Commission in another proceeding, Docket No. EL01-2, which was pending on rehearing at the time CARE filed the instant complaint.⁵ Respondents also generally deny CARE's allegations.

Reliant comments that CARE's complaint highlights the role that non-public utility sellers play in the California market and that any evaluation of the operation of California wholesale markets must take into account the activities of those key suppliers. However,

³66 Fed. Reg. 20,648 (2001).

⁴On June 1, 2001, Bonneville filed a supplement to its answer.

⁵The Commission denied CARE's complaint in Docket No. EL01-2-000, in the order issued on December 15, 2000, finding that CARE had failed to meet its burden of proof and that some of the alleged violations were not within the Commission's jurisdiction to investigate. See San Diego Gas & Electric Co., et al., 93 FERC & 61,294 at 62,020 (2000) (December 15 Order), reh'g denied, 97 FERC & 61,275 at 62,236 (2001) (December 19 Rehearing Order).

Reliant also requests that CARE's complaint be dismissed, arguing that CARE has failed to support its allegations or justify its request for initiation of yet another investigation.

III. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the notice of intervention and timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.

B. CARE's Complaint

We will dismiss CARE's complaint. Its allegations are vague, and CARE seeks a number of remedies for alleged violations that are beyond the Commission's jurisdiction to address, e.g., alleged violations of civil rights of Californians and federal and state antitrust laws. Further, what we interpret to be CARE's overriding concern regarding matters that are within our jurisdiction, **B** i.e., alleged unjust and unreasonable prices in the California wholesale market **B** was already the subject of ongoing proceedings before the Commission. Indeed, subsequent to the date of CARE's complaint, the Commission issued several orders addressing mitigation measures and refund procedures concerning the California wholesale electricity markets.⁷ In the December 19 Rehearing Order, the Commission, among other things, denied CARE's request for rehearing of the December 15 Order, stating:

⁶18 C.F.R. ' 385.214 (2001).

⁷See, e.g., San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC & 61,115 (2001), order on reh'g, 95 FERC & 61,418 (2001) (June 19 Order); San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 96 FERC & 61,120 (2001) (July 25 Order). The December 19 Rehearing Order addressed requests for rehearing of, among other things, the December 15, June 19 and July 25 Orders.

As discussed elsewhere in this order, the remedies implemented in this proceeding have sufficiently mitigated the adverse market conditions in California. The Commission continues to believe that our market-oriented approach will enhance investment in new generation and promote greater efficiency.

* * *

The discussion above . . . responds to CARE's request in its complaint [in Docket No. EL01-2-000] and on rehearing that the Commission rectify the unjust and unreasonable prices stemming from the ISO and PX markets. CARE's rehearing does not address the fact that antitrust and civil rights violations are not within the Commission's jurisdiction or expertise.⁸]

For the same reasons, we deny CARE's request to initiate a new proceeding to rectify prices in the instant proceeding and to address antitrust and civil rights violations.⁹ Further, CARE's request that the Commission, pursuant to FPA section 202(c), request the Secretary of Energy to declare an energy emergency is unnecessary in view of the various measures undertaken by the Commission and the stabilization of the California market. We further note that issues concerning the Commission's refund authority, including that over governmental entities, were addressed in the December 19 Rehearing Order, and they need not be addressed here.

The Commission orders:

CARE's complaint is hereby dismissed.

By the Commission.

(S E A L)

⁸97 FERC at 62,236.

⁹Further, CARE does not suggest how the Commission is empowered to act pursuant to NAFTA.

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Linwood A. Watson, Jr.,
Acting Secretary.